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Tradeoffs in Accountability

Conditionality Processes in the European Union and Millennium Challenge Corporation

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INTRODUCTION

The American aid apparatus found itself in a quandary at the end of the last millennium. The dissolution of the Soviet Union had robbed it of one reason for being: providing material support to allies in the Cold War and bolstering friendly governments in countries in danger of succumbing to Soviet influence. Decades of anecdotal experience and recent empirical research threatened to deprive it of another, as critics suggested that US aid disbursements neither stimulated economic growth nor lessened poverty but in fact, might be correlated with worse economic outcomes in recipients. American aid budgets steadily decreased during the decade following the end of the Cold War,[1] as the commitment of other developed nations to assisting poor countries appeared to increase. By the early 2000s, with the development of the United Nations Millennium Development Goals and an apparently renewed commitment to combating worldwide poverty among countries in the Organisation for Economic Co-operation and Development, the US aid establishment appeared in need of revitalization.

The European Union (EU) faced a different challenge in the last decade of the millennium, as the anticipated accession of Austria, Finland, and Sweden in 1996 left EU expansion at a crossroads. On the one hand, the pan-European rhetoric of the post-Soviet years suggested that the countries of Central and Eastern Europe next deserved consideration for a place in the Union[2]; on the other hand, concerns about cultural, political, and economic gaps between EU members and would-be members made the former hesitant to commit to the latter's accession.[3]

The United States met the challenge to its aid institutions by creating a new organization in 2004, the Millennium Challenge Corporation (MCC), that aimed to assist only governments that had demonstrated the capacity to use this assistance to benefit their people. The EU resolved the dilemma posed by its course of expansion by committing in 1993 to the accession of its eastern neighbors provided that these

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countries could demonstrate that they were economically sound, respected human rights, and had the political and administrative capacity to function as members of the Union. Thus, both the United States and the European Union responded to their challenges by implementing *conditionality processes*, or *processes that conditioned the transfer of benefits to recipients on demonstration by those recipients of compliance with certain standards*.

The US and EU conditionality processes differ in important respects, but one major difference lies in the way that each assesses country compliance. The MCC uses twenty quantitative indicators[4] that purport to measure how successfully countries govern in varying respects; it compares the indicator scores of individual countries to those of other countries with similar incomes and requires passing scores on a minimum number of indicators before a country may become eligible to receive funding. The MCC thus employs what we will call a *quantitative conditionality process*, or a *conditionality process in which potential recipients of benefits are judged by reference to quantitative standards*. The EU, in contrast, does not attempt to quantify the performance of candidates for accession. Instead, it uses regular reports (based in part on third-party monitoring of candidates) and regular meetings between EU officials and officials of candidate countries to flesh out the standards applicable to candidates, judge candidates' performance, and communicate these judgments. Thus, the EU uses a *qualitative conditionality process*, or a *conditionality process in which potential recipients of benefits are judged by reference to qualitative standards*. This process is largely devoid of quantification.

As exercises of transnational power, both the EU and MCC conditionality processes raise concerns about *accountability*,[5] which we define as *giving accounts to others and permitting others to make demands as to one's conduct*.[6] These concerns are heightened by the way in which each process sets up a normative framework for how countries should be governed, and seeks to incentivize countries to adhere to this framework. The differing natures of the EU and MCC processes give us an opportunity to test some hypotheses about how the use of numbers or narratives affects accountability. In particular, we focus on three components of accountability: legibility, reason-giving, and participation.[7] Are qualitative conditionality processes more opaque? Are quantitative conditionality processes less inclined to justification and more closed to participation? This chapter explores these questions in the EU and MCC contexts.

HOW THE MCC AND EU MAKE DECISIONS

Both the MCC and the EU have sophisticated websites that make available a variety of documentation describing how their conditionality processes work (European Commission [EC] 2013g; MCC 2014i).

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The MCC's Three-Step Process for Selecting Recipients

Although the MCC has tinkered with its selection approach over the years, it essentially determines who receives its assistance in three steps. It first identifies candidate countries by income level; next, it selects countries eligible for MCC assistance based on their scores on indicators developed by third parties, as well as some other considerations; and finally, it enters into compacts with countries that have developed successful project proposals and begins disbursing funds (MCC 2014k).[8] The MCC also provides smaller grants to countries that miss being selected as eligible by a narrow margin, with these grants known as "threshold programs."

As of January 2014, the MCC had approved compacts worth more than US$9 billion in twenty-five countries, and threshold programs worth more than US$500 million in twenty-two countries (MCC 2013a, 2, 2014c). The compact programs range in funding from US$65.7 million (for the Vanuatu compact signed in March 2006 and completed in April 2011) to US$698.1 million (for the Tanzania compact signed in February 2008 and completed in September 2013) (MCC 2011b, 2013h). Threshold programs are smaller than compacts, ranging from US$6.7 million (for the program agreed with Guyana in August 2008 and completed in February 2010 to US$55 million (for the program agreed with Indonesia in October 2006) (MCC 2014g, 2014h).

In its first selection step, the MCC identifies candidate countries by considering whether their per capita incomes qualify them for inclusion in either a Low-Income category or a Lower Middle-Income category.[9] This classification matters, as countries compete against their income-group peers in the second step of MCC selection.[10] The Corporation then disqualifies from consideration countries that are ineligible to receive US economic assistance because they are subject to US or international sanctions.[11]

The methodology currently used for the MCC's second selection step was introduced in fiscal year (FY) 2012 (MCC 2011c, 4); although the new methodology differs somewhat from the methodology used earlier, the principles governing this step have remained consistent throughout the MCC's existence. As currently conceived, the second step requires the MCC's Board[12] to examine the performance of candidate countries on twenty third-party indicators[13] divided into three groups: Ruling Justly, Investing in People, and Encouraging Economic Freedom. To determine whether candidate countries are eligible to enter into a compact with the MCC, the Board considers whether these countries have achieved passing scores on at least half of the indicators; for most indicators, this means that countries must have surpassed the median score of their income peer group on the indicator, though some indicators have hard thresholds that countries must exceed to pass.[14] The Board also takes into account whether candidate countries have achieved passing scores on the Control of Corruption indicator and either

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the Political Rights or Civil Liberties indicator in the Ruling Justly category, and considers whether candidate countries have passed at least one indicator in each category. The Board does not confine its analysis to countries' performance on the third-party indicators; it also considers supplemental information to address weaknesses in the indicators (MCC 2013c, 4–5).

Compact-eligible countries do not automatically receive MCC assistance. In the third step of MCC selection, eligible countries design compact proposals after undertaking economic analyses and consulting with their citizens and the private sector to identify ways they can use funding to stimulate economic growth and reduce poverty (MCC 2013a, 3). The MCC decides whether to approve proposals by considering if they have broad-based in-country support; are consistent with gender, environment, and procurement guidelines; and are projected to generate adequate benefit streams (as measured by economic rate of return analyses) and deliver benefits to the poor (as determined by beneficiary analyses) (MCC 2014d). Once the MCC enters into a compact with an eligible country, the compact may nonetheless be suspended or terminated if the country has "engaged in activities contrary to the national security interests of the United States," "engaged in a pattern of actions inconsistent with MCA eligibility criteria," or "failed to adhere to its responsibilities under a compact" agreement (MCC 2014j).

As noted, compacts are not the only way in which countries may receive MCC funds, though they are most important in terms of funding volume. The MCC also awards smaller grants to support threshold programs in "countries that come close to passing [the eligibility] criteria and are firmly committed to improving their policy performance" (MCC 2014a).

The EU's Three-Step Pathway to Accession

The EU also utilizes a three-step approach to determine which countries will ultimately accede to the Union, whereby applicant countries become potential candidates, candidates, and then members (EC 2013e). Countries have thus far acceded to the EU in six waves, with two such waves in the past decade bringing thirteen additional countries into the EU.[15] As of January 2014, eight countries are participating in the process of becoming EU members; five of these countries – Iceland, Montenegro, Serbia, Turkey, and the former Yugoslav Republic of Macedonia – have become official candidate countries, while three others – Albania, Bosnia and Herzegovina, and Kosovo – remain potential candidates (EC 2013c).

The textual bases for the accession process are set out in Articles 6(1)[16] and 49[17] of the Treaty on European Union. In December 1993, the EU Council (hereafter the Council) elaborated on these provisions by promulgating the "Copenhagen criteria," which require countries that wish to join the EU to have (1) stable

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institutions that guarantee democracy, the rule of law, human rights, and respect for and protection of minorities; (2) a functioning market economy, as well as the ability to cope with the pressure of competition and market forces at work inside the EU; and (3) the ability to take on and implement effectively the obligations of membership, including adherence to the objectives of political, economic, and monetary union (EC 2013d).

The first step countries take toward satisfying these criteria involves the grant of what is known as a membership perspective to countries seeking to join the EU, which confers the status of potential candidate on these countries and permits them to begin implementing reforms with EU support and guidance, with an eye to attaining readiness to begin the formal process of EU accession. In the Western Balkans, this first step has taken place through what is called the Stabilisation and Association Process (SAP), whereby the EU (1) offers potential candidates trade concessions and economic and financial assistance, and (2) concludes Stabilisation and Association Agreements (SAAs) with each potential candidate[18] that set out reform objectives that the country must achieve (EC 2013e; 2011, 9). The EU monitors potential candidates' progress in fulfilling the requirements of these SAAs through regular progress reports generated by the European Commission (hereafter the Commission) (EC 2013f).

The second step of the accession process begins with a decision by the Council to accept a country's application to join the EU, leading to its recognition as a candidate country. The Council makes this decision after receiving an opinion on each country's candidacy from the Commission, and must make its decision unanimously (EC 2011, 8). The Council must then unanimously agree on a framework for membership negotiations with each candidate country (EC 2013e). Once it has done so, chapter-by-chapter negotiations may commence concerning each candidate country's adoption, implementation, and enforcement of the set of EU standards and rules known as the *acquis communautaire*, or "that which has been agreed" (EC 2013d).

The *acquis* is divided into thirty-five chapters, dealing with topics ranging from "free movement of capital," to "judiciary and fundamental rights," to "foreign, security and defence policy" (EC 2013b). In a process known as screening, the Commission first examines the extent to which each candidate has adopted the *acquis* pertaining to each chapter, and then recommends that the Council either (1) set opening benchmarks that each country must meet before negotiations on a chapter may be opened, or (2) open negotiations and set closing benchmarks that must be achieved before negotiations will be closed (EC 2013e). Achieving closing benchmarks does not permanently close negotiations on a given chapter; chapters are considered to be definitively closed only at the end of the entire negotiating process (EC 2011, 11).

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Candidate countries also agree to Accession Partnerships, which identify priority areas where reforms must be implemented for countries to fulfill the Copenhagen criteria and join the EU (EC 2008, 2011, 9). The Commission monitors candidate countries' progress toward adopting the *acquis* and fulfilling the Copenhagen criteria by means of publicly available regular reports, strategy papers, and clarifications on conditions for further progress, which are presented to the Council and European Parliament (hereafter the Parliament) (EC 2013d, 2013f). These reporting mechanisms are similar to those used in the SAP (EC 2008, Annex § 6). The Commission notes that these "progress reports provide valuable feedback to the countries and signal the main areas where efforts are still required" (EC 2011, 12).

Finally, once a candidate country has completed negotiations on all the chapters of the *acquis*, the terms and conditions whereby the country will accede to the Union are incorporated into a Draft Accession Treaty (EC 2011, 13). This agreement lists all transitional arrangements and deadlines, financial arrangements, and safeguard clauses that will structure and characterize the country's transition to membership (EC 2013e). After winning the support of the Council, the Commission, and the Parliament, the Treaty must be signed by the candidate country and representatives of all member countries, whereupon it is submitted to all these countries for ratification (EC 2011, 5). Once the Treaty has been ratified, accession follows on the date the Treaty enters into force (EC 2013e).

THE LEGIBILITY OF MCC AND EU DECISION MAKING

As these descriptions of the MCC and EU conditionality processes make evident, the processes differ in the way in which they make and communicate judgments about the potential recipients of their benefits. The EU depends on context-specific monitoring and reporting of countries' progress along the path to accession, though it uses benchmarks, criteria, plans, and agreements to impose some structure on this monitoring and reporting. The MCC, in contrast, uses third-party assessments of country performance that have been converted into numbers and sets up numerical thresholds for how well countries must perform on these indicators. The MCC also uses quantitative tests to evaluate the quality of country program proposals. Importantly, the MCC process also permits the Board to rely on qualitative considerations in making decisions about country eligibility and compact conclusion, so the MCC process is not purely quantitative.

We might predict that to the extent the MCC process does employ quantitative conditionality, it will be more legible than the qualitative conditionality process of EU accession, where we define *legibility* as the *ease with which an observer can identify the basis on which a decision is to be made*. Generally speaking, one of the advantages of numbers is that they appear simpler and more portable than

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qualitative descriptions of phenomena. As Merry (2011, 84) explains, "numbers seem open to public scrutiny and readily accessible in a way that private opinions are not," so that "[a] key dimension of the power of indicators is their capacity to convert complicated contextually variable phenomena into unambiguous, clear, and impersonal measures." Espeland and Stevens (2008, 432, 415) similarly suggest that "[t]he enduring appeal and utility of quantification is that it facilitates the production of knowledge that transcends and integrates particularities of place, language, and custom," as numbers "easily circulate and seem straightforward to interpret." Many who study indicators have noted that these appearances may be deceiving: indicators generate the appearance of simplicity by submerging complexity about the definitions of the concepts measured (Espeland and Vannebo 2007, 32; Merry 2011, 84), the comparability of dissimilar entities (Espeland and Stevens 2008, 408; Perry-Kessaris 2011, 415), the messiness of real-world measurement (Jennings 2001, 366), difficulties in interpreting data (Merry 2011, 86), and questions about whether the phenomena represented are amenable to measurement at all (Neylan 2005, 24; Perry-Kessaris 2011, 413).

If indicators secure gains in simplicity by obscuring complexity, they nonetheless enable decision-making processes that are more mechanistic and regularized than processes based on qualitative judgments. As Porter (1995, 4–5, 8) explains, quantitative methods "permit reasoning to become more uniform, and in this sense more rigorous," thus enabling what he calls "mechanical objectivity," or "following the rules." Porter cautions that quantitative decision making is no panacea; "[m]apping the mathematics onto the world is always difficult and problematic," and to the extent "[q]uantification is a way of making decisions without seeming to decide," it obscures exercises of judgment and power. Nonetheless, to the extent quantitative conditionality processes are designed to make decisions by employing easily comprehensible numbers in a mechanical fashion, we may expect them to exhibit greater legibility than qualitative conditionality processes, as they allow observers to more easily identify the mechanisms by which decisions are supposed to be made. Such legibility makes a contribution to accountability; where observers can easily discern how a decision was supposed to be made, they can more easily identify deviations in how the decision was actually made.

The Legibility of the MCC Selection Process

As we have noted, the MCC's conditionality process is not wholly determined by quantitative measures. The first one and a half steps of the process – classifying candidate countries by income level and identifying countries that have performed satisfactorily on the third-party indicators – do rely on such measures. But the second part of the second step and the third step – selecting compact-eligible countries and finalizing compacts with countries – rely not only on quantitative measures but

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on qualitative considerations as well. We thus might expect the first one and a half steps of the MCC process to be quite legible and the latter one and a half steps to be more opaque. This expectation is borne out in practice. However, the extent to which even the latter half of the process appears driven by quantitative decision making, though the MCC is formally permitted to exercise relatively unconstrained discretion, is surprising.

The first one and a half steps of the MCC process are, to a large extent, comprehensible even to casual observers. In the first step, the MCC borrows income data and classifications from the World Bank and International Bank for Reconstruction and Development and then subtracts from these lists those countries to whom Congress has proscribed aid under part I of the Foreign Assistance Act of 1961. In the first part of the second step, the MCC considers whether candidate countries have achieved "passing" scores on the requisite number of indicators, a task that any observer can duplicate thanks to the MCC's publication of scorecards that graphically depict each country's scores on each indicator over the past few years. These scorecards not only include lines for each indicator score chart that separate passing from non-passing performances, but they also provide color-coded squares at the top of each scorecard that show whether each candidate country has passed each of the three indicator tests (i.e., passing more than half the indicators, passing the required indicators, and passing one indicator in each indicator group) (MCC 2013a, 8–92).[19] In less than a half-hour, one can download this document from the MCC's website and determine for oneself which countries should be eligible for funding based solely on their performance on the third-party indicators.

The second part of the second step and the third step present greater obstacles to understanding how MCC decision making works. Each step involves the use of discretion based on qualitative factors, and although the MCC has enumerated the considerations that are to guide each exercise of discretion, these considerations are too vague to furnish much legibility.

MCC Selection of Compact-Eligible Countries

The MCC makes no secret of the fact that it exercises discretion in selecting eligible countries. As its FY 2014 guide to the indicators explains, "[t]he Board may also consider information to address gaps, time lags, measurement error, or other weaknesses in the indicators to assist in assessing whether MCC funds might reduce poverty and promote economic growth in a country" (MCC 2013c, 5). The MCC's report on eligible countries explains that aside from candidate countries' performance on the twenty enumerated indicators, the Board also considers

> additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption, investments in human development outcomes,

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> or poverty rates… The Board may also take into account the margin of error around an indicator, when applicable. In keeping with legislative directives, the Board also considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall information available, as well as the availability of appropriated funds. (MCC 2006, 2013c, 4)

The need for an exercise of discretion is plain: the MCC does not claim that the indicators it has chosen exhaust the concept of "good governance," and even concedes that these indicators may not adequately measure a country's worthiness for eligibility.[20]

There can be little doubt that the MCC Board has exercised its discretion both to select as eligible countries that did not qualify based on their indicator performance and to deny eligibility to countries that did qualify based on the indicators. In FY 2011, for example, fifteen Low-Income countries satisfied the MCC's indicator criteria – Benin, Bolivia, Gambia, Ghana, Guyana, Lesotho, Malawi, Moldova, Nicaragua, Philippines, Rwanda, Senegal, Tanzania, Vietnam, and Zambia – while three Lower Middle-Income countries – Jordan, Sri Lanka, and Thailand – passed the test (MCC 2010a). Of these countries, all but seven – Bolivia, Gambia, Guyana, Rwanda, Sri Lanka, Thailand, and Vietnam – had already been selected as candidates in previous years, and had either signed or begun developing compacts with the MCC.[21] When it came time to choose FY 2011 candidates, however, the MCC's Board "selected Ghana and Georgia as eligible to develop proposals for compacts, the second for each country" (MCC 2011d). The Board thus passed over the seven countries that qualified as MCC recipients based on their indicator performance, and that had not yet signed compacts with the MCC,[22] in favor of two countries that had already been awarded compacts – including one country, Georgia, which in FY 2011 did not even satisfy the indicator criteria.[23] Nor was 2011 an outlier; in most years, the Board exercises its discretion to select as eligible some countries that do not pass the indicators test, and to deny eligibility to some countries that do pass this test.

We noted in the preceding text that when decision-making processes exhibit greater legibility, it is easier to identify when decisions are made in impermissible ways. For the MCC, which was designed in part to lessen the influence of political considerations on US aid decisions, the Board's ability to exercise largely unconstrained discretion in the second half of the second selection step would seem to make the MCC's conditionality process less legible. This in turn could fairly give rise to concerns that the MCC is selecting eligible countries based on forbidden considerations. Some commentators have indeed suggested that the Board is influenced by political considerations in selecting eligible countries. Thus, Johnson and Zajonc (2006, 6) surmise that the MCC has used its discretion "to exclude countries that, for political reasons, are deemed inappropriate recipients of US aid

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such as China, India, and Bhutan," and Tarnoff (2013, 8), of the Congressional Research Service, has noted that the "hold put on MCC consideration of Bolivia's compact proposal in FY2008 and its exclusion from eligibility in FY2009 appeared likely due to the political tensions existing between it and the United States rather than its performance in development related matters." However, some of these decisions are fairly explicable by reference to other, nonpolitical considerations that the Board is permitted to rely on in exercising its discretion.[24] Commentators – including some critical of the MCC – tend to agree that geopolitical considerations do not play an important role in MCC decision making (Nowels 2005, 10; Owusu 2007, 19; Collins 2009 373).

In fact, the most surprising feature of the Board's exercise of discretion in the second half of the second selection step is that although this discretion may take qualitative information into account, the Board seems to *prefer* to rely on quantitative measures; and although this discretion is formally subject to few constraints, the Board tends in practice to make its discretionary decisions by adhering to relatively simple rules that turn on indicator performance.

In FY 2013, the MCC began publishing a *Guide to the Supplemental Information Sheet* that describes the supplemental information that the Board considers when selecting countries for threshold programs and compacts (MCC 2012a, 3, 2012b, 4). Though the Board may take into account "additional quantitative *and qualitative* information" (MCC 2013e, 4), the majority of the supplemental information sources identified in this guide are quantitative – for example, the percentage of a country's economy that is in the country's informal sector, or the percentage of World Bank projects in each country that are reported "at risk" due to various implementation problems (MCC 2012a, 3–4).

And the Board's exercise of discretion often appears in practice to involve the application of simple rules involving the indicators that feature in the first half of the second selection step. Thus, Nowels (2005, 12, 8), of the Congressional Research Service, has explained that "[i]t appears … that scoring 'substantially below' – perhaps in the lowest 25th percentile – has become a de-facto criteria for exclusion." This unspoken rule can explain why, in FY 2005, Burkina Faso, China, Djibouti, Egypt, Nepal, the Philippines, and Swaziland satisfied the indicator criteria but were not selected as eligible, and in FY 2004, the Board did not select as eligible four countries – Bhutan, Guyana, Mauritania, and Vietnam – that technically met the performance criteria. Commentators have also hypothesized, with respect to the selection methodology used before FY 2012, that the MCC refused to confer eligibility upon countries that failed all three "democracy indicators" (Political Liberties, Civil Liberties, and Voice and Democracy) in the Ruling Justly category.[25] Dunning et al. (2011, 9 n.14), of the Center for Global Development (CGD), noted in 2011 that "Bhutan and Vietnam have passed the indicators test for seven and eight

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years, respectively, but have never been selected as compact-eligible presumably because each country has also consistently failed all three 'democracy indicators.'" The new methodology introduced in FY 2012, which requires countries to achieve a passing score on either the Civil Liberties or Political Liberties indicators, appears to codify this previously unspoken rule (MCC 2011c, 4).

This is not to suggest that the MCC has wholly replaced its discretion in selecting eligible countries with tests driven by quantitative measures. The MCC sometimes selects countries that run afoul of the "25th-percentile rule," or that fail to pass the indicators test, so long as "recent policy changes or positive trend lines" excuse their poor performance on a single indicator – a practice that explains the selection of Bolivia, Cape Verde, Georgia, Lesotho, Mozambique, and Sri Lanka in FY 2004 (Nowels 2005, 8). Jordan's selection as eligible in FY 2006 appeared to flout the "democracy indicators" rule (Tarnoff 2007, 16). Indeed, sometimes the MCC's exercise of discretion in selecting eligible countries can seem arbitrary. To take FY 2006 as an example, Tarnoff (2007 14–15) notes that the Board's "reason for not selecting Uganda, despite having passed 12 of the 16 indicators and not falling significantly below the median on the other 4," was not clear. The Board selected two lower middle-income countries as eligible in FY 2006; however, the Board likely "could have decided to select none of the lower middle-income nations by using criteria it had applied consistently in the two previous rounds. Moreover, it was not clear why the Board chose the two that did qualify. All eight Lower Middle-Income countries that passed the performance indicator test fell significantly below the median on at least one of the indicators."

Nonetheless, the MCC appears often to replace its discretion to rely on qualitative factors in selecting eligible countries with quantitative tests based on indicator performance. To the extent the Board uses such tests, its selection becomes more regularized and comprehensible. If the second half of the second step of the MCC process is less legible than the first half of the process, then, it is nonetheless more legible than we might have expected.

Finalizing MCC Compacts with Eligible Countries

As for the third step of the selection process, the MCC (2008, 4, 2013e, 7) has made clear that "[s]ubmission of a proposal is not a guarantee that MCC will finalize a compact with an eligible country. Any MCC assistance provided under section 605 of the Act will be contingent on the successful negotiation of a mutually agreeable compact between the eligible country and MCC approval of the compact by the Board, and availability of funds." The MCC determines which projects to fund using four technical tools: constraints analyses (CA), benefit-cost analyses (BCA), economic rates of return analyses (ERR), and beneficiary analyses (Lucas 2011, 3–4; MCC 2013b, 1–2). It demands that proposed projects demonstrate a minimum

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ERR[26] and makes the results of these analyses publicly available (MCC 2014d). The MCC does note, however, that "[i]n making its final investment decision, MCC considers factors other than the ERR. As a result, a project with a low ERR might be approved or a project with a high ERR might be rejected on the basis of other considerations" (Wiebe 2008, 8).

Many of the early compacts approved by the MCC shared a similar sector concentration (Tarnoff 2013, 28); to some critics, this showed that the MCC exercised its discretion in its third selection step with an unstated neoliberal bias. As Mawdsley noted in 2007, the compacts approved by the Board "are remarkably similar. It would appear that *every single country* independently identified agribusiness, rural entrepreneurial development, and transport infrastructure as their key priorities."[27] This criticism has lost some of its force in recent years, as the MCC has diversified into greater investment in governance, water supply, and sanitation and in health, education, and community services (Tarnoff 2013, 9). Moreover, despite these charges, no critic has suggested that examination of the publicly available CA, BCA, ERR, and BA analyses demonstrates that the MCC is not following these analyses in approving compacts (though the MCC does not make these analyses available for proposals that are *not* approved). We have little reason as of yet to believe that the MCC is basing its compact decisions on anything other than the results of these analyses, even though the Board is explicitly permitted to take other, qualitative considerations into account. Consequently, the third step of the MCC process appears to operate in a relatively comprehensible, regularized fashion.

Our hypothesis that the indicator-driven steps of the MCC process would be quite legible is thus confirmed in practice; these steps are more comprehensible than the parts of the process that are explicitly permitted to rely on qualitative considerations. Even in these latter parts of the process, however, the MCC often appears to *choose* to exercise its discretion in predictable, indicator-oriented ways, though it is allowed to consider qualitative factors. This suggests that constraining certain steps of a conditionality process to depend on quantitative tests may encourage reliance on quantitative considerations in other parts of the process as well. We later consider some possible explanations for this phenomenon.

The Legibility of EU Accession

In contrast, we would expect the EU's accession process, with its more indeterminate requirements and emphasis on monitoring and reporting, to be less legible. Such opacity might result from (1) challenges in understanding what subjective applications of abstract principles mean in a concrete sense; (2) difficulty in generalizing from a mass of context-driven reporting to attain a more panoptic view of how the accession process works; and (3) the likelihood that, in the absence

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of restrictive rubrics governing their application, qualitative requirements are not applied consistently across different countries and subject areas. In short, given the abstraction, complexity, and subjectivity of the EU accession process, we would expect observers to have difficulty understanding how it is supposed to work. This is borne out in practice.

The Indeterminacy of the EU Process

As a general rule, EU decision making is complicated; Heisenberg (2005, 65) notes that "[i]t is difficult for all but the most committed analysts of the EU to fully understand the formal process by which the EU makes decisions." The complexity of the accession process is particularly mind boggling, especially as regards adoption of the *acquis*:

> [T]he 'acquis communautaire' [has] steadily developed, and in 2001 encompassed some 90,000 pages of regulations by the Commission, as well as the precedents of the European Court of Justice over the last 50 years; all joint declarations and conclusions of the Union regarding common foreign and security politics and home and justice affairs; all international agreements of the Union with third countries; all intergovernmental agreements among single member states of the Union; and finally, all principles of *primary* EU law stemming from the Treaties of Maastricht, Amsterdam and Nice. (Behr 2007, 248)

If we set aside this complexity, however, we can discern another obstacle to understanding how the accession process is meant to work: the incomplete specification of some of its requirements.

Thus, some areas of the *acquis* present only vague standards governing the reforms acceding countries must implement. For example, as Hughes, Sasse, and Gordon (2004, 534, 547) have explained, chapter 21 of the *acquis* (dealing with regional policy and coordination of structural instruments) actually offered only "a very weak legal basis" for any particular reform requirements and no "benchmarks for compliance." This indeterminacy led EU officials to make conflicting demands on candidate countries during the fifth wave of enlargement, first demanding that countries devolve power to their regions, and then insisting that they centralize authority to simplify their dealings with Brussels.

If these problems with indeterminate requirements afflict adoption of the *acquis*, they are more relevant in regard to the other Copenhagen criteria, as "[t]he EU has no specific test to determine whether or to what extent these conditions have been met" (Grabbe 2003, 307). Not only do these vague conditions give the EU greater discretion to make policy demands on candidate countries, but they also encourage EU officials to make these demands *sub silencio*, by "minimalist directives and

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non-compulsory directives," leaving candidates unable to determine precisely which requirements they must meet to satisfy the criteria and qualify for accession.

Finally, even where the requisite reforms are clearly delineated, there remains uncertainty as to how to prioritize these reforms and who will judge their implementation. Grabbe (2003, 318–323) identifies "five dimensions of uncertainty built into the accession conditions": (1) the policy agenda that should be undertaken by the applicants, (2) the hierarchy of tasks, (3) timing, (4) whom to satisfy, and (5) standards and thresholds. Given the difficulty of understanding just what it is that the EU demands of accession candidates, it is not surprising that within these candidates "public opinion remained largely ignorant of what conditionality entailed, except when a few of the conditions became controversial or over-exposed" (Pridham 2006, 386).

Of course, a quantitative conditionality process like that employed by the MCC may only camouflage this problem without solving it, given the way that indicators submerge definitional issues. In terms of concrete realities, it is little clearer what it means for an MCC candidate to achieve a passing score on a Control of Corruption indicator than it is for an EU candidate to have "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities." But it is nonetheless clearer what the MCC process entails *operationally* than the EU process, making the former more legible to observers.

Understanding Candidates' Progress Toward Accession

Two other factors further diminish the legibility of the EU process. To begin, though the different substantive areas in which candidates must implement reforms are all nominally of equal importance, not all of these areas are equally salient in practice. Thus, Hughes and Sasse (2003, 13) suggest that the EU's "mechanisms for enforcing and monitoring compliance on minority protection in the candidate countries are very weakly developed compared with other areas of the *acquis*." Haughton (2007, 240) agrees that due "to the poor record of some of the existing members in minority policy, provided the right language was used by the accession state, lack of policy improvement was highly unlikely to be a veto-point," which contrasted with the Justice and Home Affairs chapter of the *acquis*, a known "'potential veto-point in negotiations.'" Schimmelfennig and Sedelmeier (2004, 680–681) similarly suggest that "EU actors clearly communicated to the CEECs that the Schengen rules were a key condition for membership," while "parts of the Commission and some member states indicated that rather superficial alignment would not present an obstacle to concluding negotiations in the areas of EU social policy and to some extent … civil service reform." This uneven application of the *acquis* adoption requirements and Copenhagen criteria further inhibits the legibility of the EU

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process, which at the same time resembles a vague checklist and a set of hurdles with varying heights.

As for the EU's monitoring and reports, they suffer from the same defects of any evaluation that judges inherently subjective phenomena without clear benchmarks or concrete criteria: it is sometimes difficult to understand what the judgments in these reports *mean*, and it is not clear that the same standards are being applied to different candidates. Thus, Hughes and Sasse (2003, 16) contend that "there is an absence of continuity and coherence in the EU's monitoring mechanism as the Reports are characterized by ad hocism."

Reading reports supports this impression, and indeed suggests that rapporteurs may have attempted to make their judgments more legible by adopting an informal coding system. Thus, in the 2009 *Progress Report on Albania* (EC 2009, 16–32), over the course of about fifteen pages of reporting the Commission asserts that in five areas "little progress" had been made; in twelve areas, "some progress" had been noted; and in eight areas, "good progress" had been observed. Another passage of similar length reveals that in two areas "preparations" are "advancing slowly"; in nine areas, preparations are "advancing moderately" or "moderately advanced"; and in five areas, preparations are "advancing" or "advanced" (EC 2009, 27–42).[28] It seems that these quantized levels of progress and advancement must be meant to be commensurable, and to the extent this is true they help readers understand that the Commission perceives progress in some areas as more satisfactory than in others. But it is not clear why "accreditation" and "metrology," for example, deserved the assessment of "good progress" in Albania in 2009, while "conformity assessment" was judged to have displayed only "some progress." If these assessments do not simply reflect the extent to which Albania has enacted a checklist of reforms – if they attempt to measure the degree to which it has developed the capacity to integrate with the EU – it is difficult to understand how the abstract latter inquiry is carried out in practice.

What these assessments mean for Albania's chances of opening accession negotiations with the EU, and whether they are being consistently applied across countries, is even less clear. Must a country achieve a minimum number of "good progress" and "advancing moderately" assessments before it may proceed to the next stage of the accession process? Does this number vary across countries? Or does the European Commission simply rely on an impressionistic perception of whether each country has done enough to warrant advancement? In a sense, the EU reports are easily comprehensible in that they send signals to countries that they must do *more* in certain areas to achieve acceptable levels of reform. However, the reports are confusing in that they leave observers with little sense of how much progress a country has achieved, how much more the country must do before it will receive the benefit sought, and why the EU judges a country's progress in some areas to be more

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satisfactory than in others. Most critically, the reports do little to assist observers in determining whether an EU accession process is advancing according to a legitimate set of rules, or based on impermissible considerations.

The MCC's quantitative conditionality process hides some of these sources of confusion, converting subjective, variable judgments into seemingly objective, rigorous metrics. But although the MCC process does little to clarify – and in fact to some extent conceals – why performance in some areas or by some countries may be judged more satisfactory, it at least makes clearer what should occur operationally for a country to be deemed acceptable by the MCC. An observer studying the EU accession process will have difficulty forming an impression of how close a country is to becoming a candidate or an EU member, and whether the process is proceeding according to its design; such an observer can more easily ascertain whether an MCC candidate has fulfilled the MCC's declared requirements.

REASON-GIVING IN MCC AND EU DECISION MAKING

If quantitative conditionality processes are generally more legible than their qualitative counterparts, we might also expect such processes to display less reason-giving than qualitative conditionality processes, where we define *reason-giving* as *the extent to which decision makers offer reasoned justifications for their decisions*. Quantitative processes are likely to be perceived as more legitimate than their qualitative counterparts for two reasons: (1) the greater perceived rigor of processes based on numerical information and (2) the perception that quantitative processes are less vulnerable to deformation by impermissible considerations. As a consequence, we would expect qualitative processes to explain and justify judgments to a greater extent than quantitative processes to bolster their perceived legitimacy.

With respect to the first point, Espeland and Vannebo (2007, 31) explain that "[w]e tend to see numbers as more objective than other forms of information, perhaps because of their association with the rigors of mathematics and science," and are thus more inclined to credit judgments based on numbers. Merry (2011, 89) suggests that numbers "seem to be simple descriptions of phenomena and to resist the biases of conjecture and theory because they are subject to the invariable rules of mathematics." Because numbers seems more rigorous and credible than narrative descriptions, we would expect a decision-making process relying on the latter to be perceived as less legitimate, generating a greater need for it to justify its judgments.

As for the second point, the perceived legitimacy of quantitative processes is based not only on the credibility of numbers, but also on the way in which numbers permit processes to make decision making more regularized. This enhanced amenability to mechanical objectivity, which as described previously contributes to the legibility

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of quantitative conditionality processes, also bolsters their legitimacy. As Porter (1995, 8, 197–210) explains, "[a] decision made by the numbers (or by explicit rules of some other sort) has at least the appearance of being fair and impersonal," and the more mechanical the decision the greater the perception that it is free from the idiosyncrasies of personal judgment. Espeland and Vannebo (2007, 39) thus postulate that "[t]he legitimacy of quantitative authority depends on procedures, on methodology, rather than on the discretion of particular persons or the expertise of trained professionals." Qualitative decision-making processes, on the other hand, engender suspicion that personal judgments or extraneous considerations have influenced the decision. We would thus expect a quantitative process like the MCC to be able to use the appearance of regularized rigor to dispense with reason-giving, while a qualitative process like EU accession might need to explain its decisions.

Examining the MCC and EU processes reveals that these expectations are matched by reality. Although the MCC prioritizes openness and transparency, it avoids giving reasons for *not* selecting countries as eligible or *not* concluding compacts with eligible countries. The EU, on the other hand, relies on dense consultation between the EU and officials from applicant countries to elaborate on and explain accession requirements and judgments as to compliance. This reason-giving, however, takes place largely out of the public eye. We draw from these observations an additional conclusion: while the EU has an internal accountability orientation, focused on direct participants in the accession process, the MCC has an external accountability orientation focused on rendering accounts to outsiders. This external orientation explains not only the gaps in MCC reason-giving, but also its general reliance on quantitative decision-making processes.

Gaps in MCC Reason-Giving

The transparency of its processes represents an evident point of pride for the MCC. Wiebe (2008, 2), the MCC's former chief economist, has suggested that "what is truly innovative about MCC's approach is the systematic application of [its] analytical techniques to virtually every element of every program and the transparency provided by the use of these techniques and MCC's public dissemination of their output." Hewko (2010, 11), former MCC vice president, claims that the "MCC has undertaken an unprecedented level of transparency" and that it "is being praised for a level of transparency that exceeds that of other bilateral and multilateral donors." Lucas, former MCC Director of Policy and Evaluation, elaborates that

> Transparency is at the heart of accountability… For this reason, MCC makes information available along the full cycle of country engagement, from country selection through implementation to results. For all compact programs, the website

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> has five-year compact and project budgets, detailed project descriptions, projected outcomes, quarterly updates on financial and program progress, and results of independent impact evaluations as programs are completed. (2011, 7)[29]

It is indeed true that the MCC displays impressive transparency in some respects. Despite finding the MCC generally wanting, Chhotray and Hulme (2009, 39) note that "MCA is different from previous attempts at selectivity" in that "it proposes to use a public, transparent process to select countries to receive aid." Even Mawdsley (2007, 495), a steadfast critic of the Corporation, concedes that "[t]he calculation of the medians and how individual countries score on them is rendered relatively transparent by relying on publicly available rankings and figures derived from a number of organizations, including the World Bank and Heritage Foundation." As we noted earlier, the first, first half of the second, and third steps by which the MCC selects countries are quite legible to outside observers; though the second half of the second step involves the use of discretion in ways that are not necessarily obvious, this discretion has also sometimes been cabined by unspoken rules that rely on predictable tests based on indicators.

Given the MCC's emphasis on openness, one surprising aspect of its selection process is that when the Corporation *does* exercise discretion, it often does not trouble to explain how it has done so. Thus, the Open Society Institute (2004, 2) suggests that the MCC should "[p]rovide the public with a rigorous justification for each MCA country ultimately selected, including a detailed explanation of the factors influencing the selection process, with special onus in cases where exceptions to the basic methodology are made"; CGD agrees that this is necessary,[30] noting the "perception that use of discretion is becoming the norm more than the exception" (Herrling 2006, 1–2). Yet the MCC continues to eschew detailed reason-giving, at least with respect to some of its discretionary decisions. The MCC is required to provide three reports each year to Congress, the last of which "identifies countries determined by the Board to be eligible under section 607 of the Act … and countries with which the MCC will seek to enter into compacts under section 609 of the Act … as well as the justification for such decisions" (MCC 2013e, 3). In this latter report, the MCC customarily does go to some lengths to justify its selection of countries as eligible.[31] But the MCC devotes almost no effort to explaining why it has *not* selected as eligible some countries that pass the indicators test, instead presenting roughly the same generalized justifications in each year's report. In FY 2007, 2008, 2009, and 2010, these reasons consisted of the following, with minor amendments:

> [A] number of countries that performed well on the quantitative elements of the selection criteria (i.e., on the policy indicators) were not chosen as eligible countries for FY07. As discussed above, the Board considered a variety of factors in addition to the country's performance on the policy indicators in determining

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> whether they were appropriate candidates for assistance (e.g., the country's commitment to fighting corruption and promoting democratic governance; the availability of appropriated funds; and in which countries MCC would likely have the best opportunity to reduce poverty, generate economic growth and have a transformational impact). (MCC 2006, 4)[32]

More recently, the MCC has favored a somewhat different but similarly uninformative and unvarying formulation.[33] The use of such a boilerplate prevents us from considering this to be a genuine exercise in reason-giving.

This reluctance to justify the exclusion of certain formally qualified countries from MCC eligibility might suggest that the Board has no principled basis on which it distinguishes between eligible and ineligible countries. After all, the MCC is likely aware of the criticism that it provides insufficient reason-giving; Herrling, who while at CGD lodged the criticisms of the MCC's unexplained use of discretion that we described previously, is now the MCC Vice President for Policy and Evaluation (MCC 2014f). But we have noted that geopolitical considerations do not appear to play a preponderant role in the MCC selection process, and that in some respects the MCC appears to be denying eligibility to countries in unstated yet principled ways.

Much of the Board's unwillingness to furnish reasons for its exercise of discretion might be attributed to the structure of its legal obligations; as Nowels (2005, 12 n.12) explains, "[t]he MCC's authorizing legislation (section 608(d)) requires the Corporation's CEO to provide justification to Congress regarding only those countries declared as eligible for MCA assistance and for those selected for Compact negotiation. Otherwise, there is no statutory requirement for the MCC to comment on its decision-making process, including the rationale for not selecting specific countries." But it seems odd for an institution that so prizes openness to content itself with doing only the legal minimum with respect to reason-giving. This is especially so when we consider that for the MCC to motivate countries to make policy changes that render them eligible for assistance – one of its raisons d'être[34] – countries must understand on what basis the MCC makes eligibility decisions. We return to this issue later in this section, but for now note that the MCC's failure to explain its use of discretion may be partly attributable to the fact that its processes appear sufficiently transparent and rigorous that it has little need to provide more information about its selection process. The EU likely faces a different set of circumstances.

The Density of EU Communications on Accession

As we have already noted, the EU accession process is formally predicated upon monitoring and reporting, which are the key mechanisms by which the Commission,

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Council, and Parliament determine whether countries have adopted the *acquis communautaire* and fulfilled the Copenhagen criteria. We have observed that this reporting by itself is likely to be difficult for observers to understand, given the vagueness of the criteria employed, the abstract judgments upon which the reporting is predicated, and the possibility that these judgments are incommensurable across issue areas and countries. Participants in the accession process – whether from candidate country governments or the Commission – appear to have dealt with these obstacles by increasing the frequency with which they consult about the process.

When the Council met in Copenhagen in 1993, it approved "a structured system of high-level political meetings" between the EU and the then-candidate countries from Central Europe[35]; since the mid-1990s, representatives of member states and candidate countries have accordingly engaged in dialogue at the ministerial level on a wide variety of subjects regarding accession (Goebel 2004, 24–25). Lower level officials in applicant countries and European countries have also had a multiplicity of contacts, including "regular visits by EU officials to countries in question, normal interchange between their governments and Brussels (which has accelerated with membership negotiations)" (Dimitrova and Pridham 2004, 102) and "[f]requent, often bi-weekly meetings … held by working group experts from the Council, the Commission and individual applicant states, or groups of applicants" (Goebel 2004, 23).[36] Schimmelfennig (2007, 130) confirms that these contacts compensate for the opacity of EU conditionality: "although many of the democratic conditions demanded by the European Union and NATO were stated in general and vague terms, the continuous stream of communications and reports from the Western organizations during the preaccession process made sure that the candidate countries received sufficient information on their shortcomings and achievements."

If these communications between officials constitute a type of reason-giving in which representatives of the Commission and member states explain to applicant country governments how well they are advancing toward accession and what they must do to continue progressing, it is important to note that these reasons are generally *not* offered to the general public, which lessens their contribution to accountability. It is also true, however, that not all reason-giving in the EU accession process is directed only to officials from applicant countries.

Grabbe (2003) points out that "[t]he EU has also made exceptional criticisms of undemocratic practices in particular countries in '*demarches*,' i.e. public criticisms that are intended to embarrass CEE governments into making particular institutional or policy changes." Most notably, when Romania and Bulgaria displayed sluggishness in implementing reforms demanded by the EU, Enlargement Commissioner Olli Rehn sent "yellow cards" to each country in June 2005 signaling that the accession process might be delayed if certain reforms were not timely addressed (Noutcheva and Bechev 2008, 135). These cards conveyed a warning that was "straightforward

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and on the public record." This type of public criticism is rare, however, as is the public threat that progress might be withheld if certain conditions are not met (Grabbe 2003). The EU appears more commonly to clarify accession requirements and explain its decision making in informal contacts between officials, out of public view. This suggests that, to the extent reasons are given to bolster the perceived legitimacy of the EU decision-making process, it is perceptions among direct participants in the EU process that matter most.

The MCC's External Accountability Orientation

The EU thus seems to engage, through dense consultation with applicant countries, in nonpublic reason-giving regarding its accession decisions. In contrast, the MCC appears reluctant to justify its decisions to exclude countries from eligibility, even when its decision making is principled; moreover, it makes public technical analyses only of the programs it funds, not of those that it rejects. The MCC's emphasis on giving reasons only for its grants of eligibility to and conclusion of compacts with countries can be explained by an orientation toward external accountability: showing third parties that its decisions are defensible, and in particular that it is not wasting resources. It seems likely that this orientation encourages the MCC to focus on objectivity, technical rigor, and accessibility, thus reinforcing its nature as a quantitative process and explaining why it sometimes eschews exercising discretion based on qualitative considerations, even when reliance on such considerations is explicitly permitted.

External Pressures on the MCC

Though the MCC was originally greeted by bipartisan political and public support, it came into being, in a sense, on the defensive. American attitudes toward foreign aid have long been skeptical, which may explain why the MCC has always devoted so much effort to rigorously justifying its program selection and aid disbursement process to parties who do not directly participate in this process. The MCC's decision to focus its reason-giving on why it has chosen to make certain countries eligible and fund certain programs makes sense, moreover, in light of the difficult political environment in which it continues to find itself. The MCC's lack of natural allies, a constrained budget environment, and the mismatch between the foundational rhetoric supporting the MCC and the results it can plausibly deliver all mean that the MCC must focus on explaining why its activities are worthwhile, as opposed to defending its omissions.

As Goldsmith (2011, 159) explains, "the MCA proposal was embraced across the aisle in Congress," with the decisive vote in the House of Representatives authorizing its creation by a margin of 382 to 42. Conservative, mainstream, and

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liberal organizations, as well as groups within the development community, backed the MCC's creation.[37] But this support was born out of weakness, in that it was predicated on distrust in American society for the foreign aid establishment and a consequent eagerness to support a different mode of operation. Hewko (2010, 4–5) notes that US foreign aid lacks "a broad-based domestic constituency" and suggests there is a widespread belief in the US that "foreign assistance resources are often wasted and spent on corrupt regimes and white elephant projects that bring little benefit to the world's poor." Chhotray and Hulme (2009, 42) observe that "[i]n the United States, civil society is much more suspicious about the use of welfare provisions, grants, and subsidies for poverty reduction," and that "US media treat foreign aid and NGOs with much more suspicion and appear to delight in highlighting examples of development programs failing." Under these circumstances, even an initially popular aid organization would need to justify its continuing utility.

This was especially true given the MCC's status as a Bush initiative; as *The Economist* (2005) has explained, despite its initial popularity the MCC lacked "natural supporters," as supporters of foreign aid were generally suspicious of President Bush, while supporters of the President generally opposed foreign aid. Hook (2008, 161, 163) further notes that while the MCC was placed outside the flagship US aid agency United States Agency for International Development (USAID) to ensure it was "free to pursue its founding principles without parochial interference," this decision also deprived the MCC of bureaucratic allies, leaving it "exposed to congressionally imposed funding restrictions."

Of course, the MCC's first years of operations also coincided with a worsening economy, producing "[e]normous pressure on the federal budget" that led "members of Congress to ask where they will get the best value for the taxpayers' money" (Dunning et al., 2011, 2). President Bush initially planned for annual funding for the MCC to reach $5 billion by FY 2006 (Tarnoff 2007, i), but the MCC appropriation was quickly "viewed by many observers as one of the most vulnerable items in an increasingly difficult budget environment" (Nowels 2005, 20). Each year, appropriations for the MCC have fallen beneath requests, and far beneath anticipated funding levels.[38] Though President Obama appears to support the MCC,[39] funding has continued to be a problem, with Obama requesting only $1.125 billion for the MCC in his FY 2012 budget and Congress appropriating only $898.2 million (Tarnoff 2012, i); for FY 2013, the MCC's budget was then cut by $45 million (MCC 2013f).

The restricted funding for the MCC makes it difficult for the agency to fulfill one of its foundational objectives: supplying large enough grants that the prospect of qualifying for MCC compacts will motivate countries to implement needed reforms. As Collins (2009, 374) explains, "[t]he MCA was designed to have a transformative

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impact on recipient countries, yet this will prove difficult to accomplish when the size of the fund may not be adequate to ensure that the MCA is one of the largest aid donors for each recipient." As for the MCC's aim of inhibiting terrorism through growth, it has appeared quixotic from the beginning.[40] The MCC is thus left with little to offer to the American taxpayer by way of justification, other than the prospect that well-spent aid might improve recipient country economies and build markets for US exports.[41]

The MCC's Need to Demonstrate Results to Outsiders

Given that this is the remaining justification for the MCC's activities, and considering the difficult political environment in which it must survive, it is unsurprising that the Corporation has focused on justifying the eligibility and funding decisions it *has* made, rather than giving reasons why eligibility has been denied or compacts have not been concluded. The MCC, in short, almost certainly focuses more on external accountability toward Congress and critics of foreign aid than it does on internal accountability toward countries participating in its selection and programming process. Thus, the MCC itself declares (in the words of its former Chief Economist) that it is "accountable to country partners for providing the obligated resources and support, and also accountable to American taxpayers to deliver results" (Wiebe 2008, 12) – but does not suggest that it is accountable to candidate or eligible countries to explain how it makes its decisions, or to point the way toward how they might qualify to receive funds. Instead, the MCC emphasizes its accountability to taxpayers, promising (in the words of its CEO, Daniel W. Yohannes) that it "holds itself accountable to the American people to ensure that every taxpayer dollar generates the best possible return on investment" and "selects country partners carefully to ensure the highest returns on our investments" (MCC 2011e, 3).

Lowenheim (2008, 266) notes that "in many Western states the move towards more transparent and accountable public policy prompts governments to justify expenditures such as foreign aid according to measurable and supposedly objective benchmarks and standards." The MCC's need to justify itself to external actors has ensured that quantitative rigor remains its primary mode of accountability. Indeed, this link between external accountability and an emphasis on technical objectivity is to be expected. As internal accountability focuses on participants in a process, it should naturally focus on apprising these participants of how the process works, what is expected of them, and (if the process involves conditionality) how they will obtain benefits. External accountability, in contrast, focuses on those who observe a process from the outside, and these observers are both more likely to focus on whether the process produces the desired effects and less likely to devote significant effort to answering this question, as they are affected only indirectly by the effectiveness of the process. Quantitative rigor is thus ideally

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suited to external accountability: the appearance of technical objectivity is likely to impress external actors, and the use of metrics lends itself to quick appraisal by casual observers.

The MCC thus focuses on objectivity, technical rigor, and comprehensibility in discussing accountability. Wiebe (2008, 14, 7) notes that impact evaluations "are performed by independent contractors, often affiliated with universities or think tanks, whose distance from the project enables them to make objective assessments of the program's impact"; while he concedes that "[s]ubjective judgments can never be eliminated from the decision process," he stresses that benefit–cost analysis "places a premium on objective, quantitative information wherever possible and identifies those places where subjective judgment is required." Yohannes (MCC 2011e, 4) similarly highlights that "[w]hat distinguishes MCC is our commitment to technically rigorous, systematic, and transparent methods of projecting, tracking, and evaluating the impact of our programs." BenYishay and Tunstall (2011, 108), former Associate Directors of Economic Analysis & Evaluation at the MCC, emphasize that "[o]nce a compact proposal is agreed upon and implementation begins, the MCC requires strict monitoring and reporting, complemented with rigorous, independent impact evaluations"; Lucas (2011, 23), the MCC's former Director of Policy and Evaluation, notes that "2 percent of compact funds are dedicated to M&E activities during implementation." And Wiebe (2008, 3, 7) suggests that the MCC accountability "framework also enhances public engagement by providing accessible information regarding decisions, progress, and results," thus "enabl[ing] outside observers to review decisions made by country partners and by MCC and to hold both parties accountable for the use of the funds."

As Chhotray and Hulme (2009, 45, 42) explain, the MCC must be responsive to "a domestic constituency that can perhaps be persuaded that the United States is the Good Samaritan giving aid money to poor people, but wants to reiterate the neo-conservative position that aid is not for wasters." It is thus unsurprising "that MCA is premised on a tightly supervised deductive framework, where public demonstration of the proper utility of aid is as, maybe more, important as the actual reduction of poverty in the recipient countries."

MEANINGFUL PARTICIPATION IN THE EU AND MCC PROCESSES

We would have expected the MCC process to be more legible than the EU process, and it largely is. We would have expected the EU to provide more reason-giving than the MCC, and it appears to do so. We might also expect that a qualitative process like EU accession could be more readily tailored to the circumstances of candidates than a quantitative process like the MCC, which might impose a more inflexible normative framework on potential recipients. That is, we would expect

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qualitative processes to provide more participation than quantitative processes, where we define *participation* as *the extent to which participants in a process may influence the methods of decision making and the factors governing decisions.*

In some respects, the obstacles to comprehensibility that we have noted regarding the EU accession process are a necessary consequence of this process's qualitative nature. The more qualitative a process, and the more it eschews metrics, rankings, rubrics, and benchmarks, the greater the role that remains for discretion in (1) setting performance requirements and (2) assessing whether these requirements have been fulfilled – resulting in a less determinate process whose operation is less legible than a more mechanical process. If this is a deficit of qualitative processes, the corresponding credit is that such processes should be easier to tailor to particular circumstances given the greater residuum of discretion retained in the system.

We would expect a quantitative conditionality process to afford less scope for tailoring, and to give potential recipients fewer opportunities to participate in shaping the process, than a qualitative conditionality process. As Lowenheim (2008, 271) explains, though quantitative "examination … reduces the degree of arbitrariness of the use of power by hegemonic states and non-state actors… this also means that decision making becomes more mechanised and might disregard the unique context of each examined state." Goldsmith (2011, 161) concurs, suggesting that "hard-and-fast rules of all countries, with widely varying conditions, are bound to prove irrelevant or counterproductive in some locations. Too often, performance measures like those of the MCA make little allowance for a productive and necessary learning process."

Quantitative processes might provide less scope for participation not only because they are more constrained, but also because they are less amenable by nature to processes of compromise. Gow (2001, 60) suggests that economic forms of rationality "seek[] maximum return on investment," while "[t]he usual instruments of political action are persuasion, bargaining, and constraint"; as decision making comes to rest on optimum-seeking quantification rather than qualitative judgments, we thus might expect opportunities for participation to diminish.

This expectation, however, does not appear borne out in reality. Instead, though the EU's process is extensively consultative, with significant flows of information between the institution and countries seeking accession, this density of communication does not seem to translate into genuine opportunities for countries to participate in shaping their pathways to accession. In fact, though some have criticized the extent to which the MCC prioritizes participation, it does not necessarily appear to be *less* participatory than the EU.

Power Asymmetry and Participation in EU Accession

Since the Copenhagen criteria were promulgated in 1993, one salient feature of the EU accession process has been the asymmetry in power between the EU and

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applicant states. This asymmetry has a few sources, beginning with the distribution of benefits from accession. As Grabbe (2002, 13) explains, "[t]he EU has all the benefits to offer (principally accession, trade and aid), and far from all of its component member-states are sure they want all the CEE applicants to join. The CEE countries, by contrast, have little to offer the EU… This asymmetry of interdependence allows the EU to set the rules of the game in the accession conditionality."[42] Hughes, Sasse, and Gordon (2004, 524) add that "[t]he absence of alternative ideological or systemic paradigms for the Central and East European candidate (CEEC) countries, other than EU membership, has tended to reinforce the widespread perception of a power asymmetry in favour of the EU during the enlargement process." And Agh (2003, 6) notes that in the 2004 eastern enlargement, the candidates represented "the so far weakest negotiating partners," given their "low GDP in per capita terms and missing institutional capacity," as well as the "isolation effect" of "missing Western skills, networks and basic information."

As most commentators agree, the EU has taken advantage of this asymmetry to make accession a process of unconditional policy transfer. Thus, Anastasakis and Bechev (2003, 12–13) characterize "conditionality towards the post-communist countries" as "a one-way process, where conditions are defined exclusively by the EU and its Member States and must be accepted unconditionally by the eastern candidates." Haughton (2007, 235)suggests that "the term 'accession negotiations' is in many respects a misnomer, as there was very little left open to negotiation beyond the odd temporary transitional arrangement (derogation)." Raik (2004, 580) does note that the Commission "did not wish to give an impression of dictating what had to be done in the candidate countries but stressed cooperation – for example, in preparing the APs, it claimed to have 'conducted intensive discussions with each country' and 'aimed to build a broad consensus on the priorities.'" But as Anastasakis and Bechev (2003, 12–13) emphasize, the "EU assumes that its prescriptions have universal applicability and should therefore be adopted and implemented irrespective of the particularities of the different countries or regions"; as a consequence, according to Hughes, Sasse, and Gordon (2004, 537), "[t]he perception of a power asymmetry meant, as a high-ranking official at the Estonian Mission to the EU explained, that the Commission 'saw candidate countries as mice in laboratories … anything could be asked of them.'" Schimmelfennig and Sedelmeier (2004, 683) explain that the result has been that "the scope of the outsiders to influence the content of the rules that they import is severely limited… [B]ureaucratic actors, intergovernmental or inter-bureaucratic relations, and a top-down process of rule transfer dominate the process of transferring these rules to the CEECs." Raik (2004, 588) laments that this left applicant countries with "no time to consider how best to incorporate EU norms into the existing domestic frameworks and to develop a coherent system."

The power asymmetry between the EU and applicant states, and the resulting capacity of the EU to impose conditions upon these states unilaterally, have

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produced some notable consequences. Arguably, the imposition without contextualization of policy changes has led to shallow reform, with formal changes unaccompanied by concrete implementation.[43] The EU's ability to dictate the terms of accession has also led over time to an increase in the volume and intrusiveness of these terms.[44] For our purposes, though, the inflexibility of EU conditionality is interesting because it demonstrates that the theoretical adaptability of a conditionality process – which we might have expected to turn on whether conditionality criteria are rigorous or amorphous, and hence whether the process is quantitative or qualitative – may matter less than the motives and opportunity of the benefit-granting institution.

Opportunities for Participation in the MCC Selection Process

Of course, the rigidity of conditionality criteria may restrain an institution to the point that it can make no allowance for participation by potential recipients; for instance, the MCC certainly has little scope to permit countries to participate in the first, most constrained step of its selection process. Though the MCC exercises discretion in the second step, and hence *could* invite participation from applicant countries, it does not do so; as we explained in the previous section, this is unsurprising in light of the MCC's external accountability orientation. It is the MCC's third step that, at least formally, provides the most room for countries to participate in setting the terms on which (1) they will be selected as compact countries, and (2) they will implement compacts. Based on the example of the EU above, however, we might expect this participation to be limited in practice; after all, the MCC would appear to enjoy a position vis-à-vis eligible countries that is just as asymmetrical as that between the EU and applicant states.

The MCC suggests that it prioritizes country participation in designing and implementing compacts, and sometimes minimizes the role that it plays in this process. Thus, Hewko (2010, 3), the MCC's former vice president, explains that after becoming eligible for funding, countries "analyze their constraints to growth; consult with their civil society and private sector to identify priority areas for MCC funding; design their MCC programs; and, where funding is provided, implement these programs." MCC documentation (2009a, 3) states that "countries have the lead in proposing how funds should be used. MCC respects the ability of the country to analyze its own impediments to growth, and expects that governments will analyze options jointly with a wide array of stakeholders." According to Hewko (2010, 11), this participatory policy "has led to a clear sense of ownership, an increase in enthusiasm and pride, and a considerable transfer of skills and know-how in economic analysis, program design, environmental and social analysis, gender sensitivity, financial accountability, procurement, and monitoring and evaluation."

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There is evidence that eligible countries have genuinely participated in designing compact proposals, and that this participation has been broad-based. *The Economist* (2005) recounts that when Madagascar became eligible for MCC funding, the Corporation pushed it to "consult more widely among its own people" after initial project proposals merely included "a wish-list of all the projects that each cabinet minister wanted." In a 2008 field report, Crone, of CGD, reported that "[c]ountry ownership beyond the government in El Salvador is evident and palpable. All the Salvadoran stakeholders interviewed touted the country's ownership of the program and consider it a national priority." According to BenYishay and Tunstall (2011, 107), Armenia's "compact proposal was developed through a consultative process in which more than 1200 individuals participated and some 230 written proposals were received on particular investment projects."[45] Similarly extensive opportunities for participation in compact development have been reported in Namibia and Burkina Faso (Tarnoff 2013, 10). Collins (2009, 373) has suggested that "[r]ecipient participation, or 'ownership,' in development programs is [an MCC] feature that has received acclaim."

Some MCC documentation reinforces this depiction of its collaborative role in the program design process. We have already noted that the MCC constrains this process by requiring successful program proposals to produce acceptable results when subjected to constraints analysis (CA), benefit–cost analysis (BCA), beneficiary analysis (BA), and analysis of economic rates of return (ERR). According to the MCC (2009a, 14), "[t]he MCA-eligible country has the primary responsibility for quantifying the economic rates of return, conducting a beneficiary analysis, and incorporating expected incremental changes in beneficiary incomes as targets within an M&E plan." The MCC sometimes suggests that it plays only a friendly, avuncular role in helping countries to perform these analyses.[46]

At other times, though, the MCC appears to envision a more didactic role for itself in this process. It sometimes describes itself as an equal partner in carrying out analyses, with "MCC economists and sector specialists work[ing] closely together from the earliest phase of compact development to assess the potential costs and benefits of a project, conduct ERR and beneficiary analysis, and shape program design for maximum impact" (Lucas 2011, 20). The MCC certainly displays a lack of trust in country capacities to analyze their own proposed programs, explaining that "initial work, whether generated by country counterparts or consultants, is reviewed by MCC staff economists. These BCA models are subject to an additional peer review by economists outside the country program" (Wiebe 2008, 9). This quotation makes clear that technical analyses may be carried out by consultants as well as counterparts in eligible countries; in fact, the MCC (2010b, 2–3) sometimes suggests that it just does this analysis itself, explaining that "[a]s a first step, where appropriate, MCC will carry out diagnostics of binding policy and institutional constraints to

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growth." The MCC also notes its resolve to "devote increased resources and time to the preparation of threshold programs and … rely more heavily on in-house experts to develop programs."[47]

Nonetheless, even if the MCC analyzes proposed programs entirely by itself, this does not mean that it develops the proposals by itself, as well. The evidence cited in the preceding text suggests that eligible countries are empowered to some degree to generate these proposals (except for those relating to threshold programs), notwithstanding suggestions from critics that approved programs demonstrate a decided neoliberal bias. While the MCC constrains the way in which eligible countries develop proposals, it certainly seems to welcome country participation to a greater extent than the EU does in its accession process. Given the asymmetry in power between the MCC and eligible countries, and our original hypothesis that the quantitative nature of MCC conditionality would constrain participation, this result is surprising.

Nonetheless, we can hazard a couple of possible explanations for the observed levels of participation in the MCC process. As noted previously, the EU's rigid approach to conditionality has meant that formal policy reform has not always been matched by concrete implementation. The MCC may have designed its conditionality process to avoid this pitfall; the MCC may provide eligible countries with opportunities to participate in program development simply because it believes that this approach is more likely to result in effective programs. But given the magnitude of the stakes of EU accession for member states – with accession leading ultimately to the free movement of goods, services, persons, and capital, as well as substantial transfers of agricultural subsidies (Hughes 2004, 529) and structural aid aimed at bringing "applicant countries' infrastructures up to Community standards" (EC 1997a, 63) – one would imagine that the EU would have a strong interest in successful implementation of reforms in applicant countries. The EU's resistance to allowing applicant countries to shape the accession process cannot easily be explained on this basis.

An alternative explanation is more counterintuitive. The MCC's quantitative constraints upon its selection process – with countries first required to pass an "objective" indicators test, and country program proposals then subjected to "rigorous" technical analyses – may leave the MCC confident that any aid it provides will (1) go to countries with favorable policy environments and (2) be devoted to sound projects. Given this confidence, the MCC may provide eligible countries with the opportunity to design their own programs because other constraints on the selection process ensure, in its view, that these countries will make good use of this opportunity. The EU, lacking these quantitative controls, may not have had the same confidence. The inflexible, rigid nature of the eastern enlargement thus may have resulted from EU fears that applicant country participation in tailoring

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conditions to local circumstances might actually enable these countries to deform the process and subvert the accession requirements.

Paradoxically, then, the narrow parameters that the MCC's quantitative conditionality sets on recipients of aid and the programs they implement may liberate the MCC, allowing it to empower these recipients to participate in other aspects of the selection process.

CONCLUSION

We began this chapter by broadly classifying the MCC aid disbursement and EU accession processes as "quantitative" and "qualitative" conditionality processes, respectively, and developed some hypotheses about the modes of accountability that each process would favor based on their quantitative or qualitative character. Just as we had expected, our examination of the two processes suggested that the MCC's process was more legible than the EU's process, and that the EU did focus more assiduously on reason-giving than the MCC. In contravention of our predictions, however, we found that the EU's qualitative process did not provide more genuine opportunities for participation than the MCC's quantitative process.

It is difficult, of course, to generalize from this limited comparison. But our examination suggests that because a quantitative conditionality process's legibility may inhibit its inclination to engage in reason-giving, whether a conditionality process is quantitative or qualitative may in the end not matter decisively in determining the extent to which decision making is transparent. We posit that quantitative conditionality processes may often display a decisive orientation toward external accountability, with quantitative decision making and an external accountability orientation particularly likely to result from insecure environments in which processes' utility must be demonstrated to outsiders. Finally, regarding the provision in conditionality processes of genuine opportunities for participation, it appears that the distribution of power between decision makers and applicants may matter more than a process's quantitative or qualitative nature; indeed, quantitative processes may afford *greater* opportunities for participation because of the ways in which they otherwise constrain outcomes and thus bolster the confidence of decision makers that the desired ends will be achieved.

NOTES

1 As Hook (2008, 154) observes, "USAID suffered cutbacks during the 1990s that amounted to 25% in real terms and 50% as a share of U.S. national income."

2 Schimmelfennig (2001, 48) explains that "[s]ince the Central and Eastern European countries and their supporters in the Community did not possess sufficient material

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bargaining power to attain enlargement, they based their claims on the constitutive values and norms of the EU and exposed inconsistencies between, on the one hand, the EU's standard of legitimacy, its past rhetoric, and its past treatment of applicant states and, on the other hand, its policy toward Central and Eastern Europe."

3 As Haughton (2007, 237) has noted, "[f]rom 1989 to 1993 the most striking aspect of the evolving relationship between the EC/EU and the states of CEE was the reluctance of the EC/EU to offer membership."

4 Davis, Kingsbury, and Merry (2012, 76) define an indicator as "a named collection of rank-ordered data that purports to represent the past or projected performance of different units."

5 For discussion of the "accountability deficit in the growing exercise of transnational regulatory power," see Kingsbury, Krisch, and Stewart (2005, 16).

6 Accountability may be defined in a number of ways, but there are common elements to these definitions. Dubnick (2005, 379) notes that despite the "increasingly ambiguous" nature of the concept of accountability, it retains a "core idea" that focuses on "those actions related to the social function of 'giving accounts.'" Gow (2001, 62) states that "[a]ccountability means giving account of the exercise of this responsibility and accepting the consequences." Barnetson and Cutright (2000, 288–289) define "accountability" as "providing a report of one's performance and being responsible for it." Messner (2009, 923) notes that "accountability denotes the exchange of reasons for conduct," and that "[t]o give an account means to provide reasons for one's behavior, to explain and justify what one did or did not do."

7 Kingsbury, Krisch, and Stewart (2005, 28) suggest that studies of the accountability of global administration should "focus in particular on administrative structures, on transparency, on participatory elements in the administrative procedure, on principles of reasoned decisionmaking and on mechanisms of review." We consider transparency to be related to two other administrative law concepts, legibility and reason-giving, which we examine here. We do not explore the availability of review mechanisms.

8 The MCC suggests that it utilizes a *four*-step process for selecting countries to receive aid, in which it (1) identifies candidate countries; (2) publishes selection criteria and methodology for country selection; (3) issues candidate country scorecards; and (4) selects countries eligible for program assistance (MCC 2014k). However, we find it analytically easier to conceive of this process as involving three steps because the MCC winnows the field of countries that may receive funding in three stages.

9 The former category includes those countries that are among the seventy-five lowest per capita income countries, as identified by the World Bank; the latter category includes all other countries with a per capita income that is not greater than the World Bank's Lower Middle-Income country threshold for the given fiscal year ($4,085 gross national income [GNI] per capita for FY 2014) (MCC 2013d, 4).

10 The MCC uses a slightly different methodology to identify candidate countries and to assess whether they are eligible to sign compacts, dividing Scorecard LICs from "Scorecard LMICs based on whether their per capita incomes fall below or above the World Bank's historical ceiling for International Development Association (IDA) eligibility, which was set at US$1,965 for FY 2014 (MCC 2013a, 1–2, 2013d, 4 n.1).

11 For FY 2014, this group included Burma, Cameroon, Central African Republic, Republic of the Congo, Eritrea, The Gambia, Guinea-Bissau, Madagascar, Mali, Nicaragua, North Korea, Sudan, Swaziland, Syria, and Zimbabwe. Countries are disqualified on this basis due to part I of the Foreign Assistance Act of 1961 (MCC 2013d, 6–7).

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12 The Board includes "the Secretary of State, the Secretary of the Treasury, the U.S. Trade Representative, the Administrator of USAID, the CEO of the MCC and four public members appointed by the President of the United States with the advice and consent of the U.S. Senate" (MCC 2014b).

13 One indicator, Girls' Education, consists of two measures: Primary Education Completion, for Scorecard LICs and Secondary Education Enrolment for Scorecard LMICs (MCC 2013c, 4–5).

14 Candidate countries' performance is gauged against an absolute threshold for the Political Rights and Civil Liberties indicators in the Ruling Justly category, the Immunization Rates indicator in the Investing in People category, and the Inflation indicator in the Encouraging Economic Freedom category (MCC 2013c, 4).

15 The fifth wave saw the accession of Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, and Slovenia in 2004, and the accession of Romania and Bulgaria in 2007. Croatia then joined the EU in July 2013 (European Commission [EC] 2013a).

16 "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States" (EU 2006, 12).

17 "Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements" (EU 2006, 34–35).

18 During the prior wave of enlargement that culminated in 2004 and 2007, the role of the SAAs was played by "Europe Agreements" (Goebel 2004, 22). These agreements aimed "to provide a framework for political dialogue, promote the expansion of trade and economic relations between the parties, provide a basis for Community technical and financial assistance, and an appropriate framework to support [potential candidates'] gradual integration into the Union" (EC 1997b, 9). Even in the early stages of the Western Balkan accession process, it appears potential candidates still entered into European Partnerships (EC 2012).

19 The color-coded squares depicting which tests each country has passed are relatively new, having been unveiled in the scorecards depicting the new methodology introduced for FY 2012 (MCC 2011a, 10–191). Even before their introduction, however, one could study the scorecards and identify eligible countries in less than an hour.

20 The MCC has admitted that "[c]ountries may be generally maintaining performance [warranting selection] but not meet the criteria in a given year" because of factors such as "data improvements or revisions," "increases in peer-group medians," or "slight declines in performance" (MCC 2009b, 3). In FY 2004, the MCC explicitly noted that it would use Transparency International's Corruption Perception Index to supplement the World Bank data on which the Control of Corruption indicator is based, explaining that the World Bank data was out of date (Nowels 2005, 6).

21 At the time countries were selected as candidates for FY 2011, the following countries had signed compacts with the MCC: Armenia, Benin, Burkina Faso, Cape Verde, El Salvador,

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Georgia, Ghana, Honduras, Jordan, Lesotho, Madagascar, Mali, Moldova, Mongolia, Morocco, Mozambique, Namibia, Nicaragua, the Philippines, Senegal, Tanzania, and Vanuatu. Three other countries – Indonesia, Malawi, and Zambia – were developing first compacts at the time (MCC 2010a, 1).

22 None of these seven countries were disqualified from candidacy by legal prohibitions barring the grant of US assistance to them (MCC 2010c, 4–5).

23 In FY 2011, Georgia passed only two Investing in People criteria, not the requisite three (MCC 2010a, 86).

24 As discussed further later, Bhutan's nonselection was equally well explicable by reference to its poor performance on the democracy indicators in the Ruling Justly category. Tarnoff (2007, 14–15) has suggested that "India w[as] not selected most likely because some of [its] scores were substantially below the median, which has become a marker used by the Board previously." As for China, its enormous size can by itself explain its nonselection, as the MCC explicitly states that it selects eligible countries based on "the opportunity to reduce poverty, promote economic growth and have a transformational impact in a country in light of the overall context of the information available to it as well as the availability of appropriated funds" (MCC 2007, 2). A similar rationale can support India's nonselection.

25 Before FY 2012, the Corporation used only seventeen indicators (grouped again into the same three categories) and required eligible countries to achieve passing scores within their income groups on at least three indicators in each category, as well as a passing score on the Control of Corruption indicator in the Ruling Justly category. The Ruling Justly, Investing in People, and Encouraging Economic Freedom categories contained six, six, and five indicators, respectively (MCC 2010d, 2–3).

26 "[T]he minimum acceptable ERR for both programs and individual components of MCC compacts will be the greater of: (a) two times the average real growth rate of GDP for the country for the most recent three years for which data is available; or (b) two times the average real growth rate of GDP for all of the MCC eligible countries for each country for the most recent three years for which data is available" (MCC 2009a, 9).

27 Chhotray and Hulme (2009, 44) similarly charge that "all of the 9 MCC compacts (signed until August 2006) focus on various aspects of agricultural development, private sector development, and economic growth, and it is difficult to believe that all MCC consultations came up with the same ideas."

28 Such coding is not an isolated occurrence; the European Commission's *Serbia 2013 Progress Report* (2013h), for example, features five areas in which Serbia was judged to have made "little progress," nineteen instances of "some progress," and five cases of "good progress"; in thirty-one areas, progress was "moderately advanced."

29 The MCC (2013g, 2) similarly states that it "applies principles of transparency at every stage of the MCC program life cycle; starting with the method for choosing partner countries, to the analyses that guide investment decisions after selection, to quarterly publication of expenditures and program performance, and finally the publication of data and sharing of results of independent evaluations."

30 Dunning et al. (2011, 16) recommend that "[w]hile the MCC board should continue to use a variety of supplementary information and exercise discretion in selecting countries eligible for MCC assistance, it should be explicit and transparent about the type of information it uses and when."

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31 The following passage is representative: "One country was selected as eligible for the first time in FY08: Malawi, a low income candidate, was selected under Section 606(a) of the Act… Malawi is currently participating in the Threshold Program. Malawi meets the eligibility criteria for the first time in FY08, scoring above the median on 13 of 17 indicators, including the Corruption indicator. The Government of Malawi has demonstrated a strong commitment to fighting corruption, and is well into the implementation of a Threshold Program focused on accelerating anti-corruption reforms and improving fiscal policy. There is a significant opportunity for a Compact with Malawi to reduce poverty and promote economic growth. Roughly 7 million people (over half the population) live on less than $2 a day. Although Malawi now meets the MCA eligibility criteria for Compact assistance, successful implementation of its Threshold Program – and of the corresponding reform commitments – remains critical. Hence, the Government of Malawi will be required to demonstrate successful implementation of the Threshold Program during the Compact development process in order to reach a Compact and then to continue to receive MCA funding under a Compact" (MCC 2007, 2). The MCC has offered similar passages justifying the selection as eligible of Moldova, Ukraine, and Jordan (2006, 3); Cape Verde (2009b, 3); and Lesotho (2013e, 5).

32 In FY 2008, this justification was amended to replace "have a transformational impact" with "poverty reduction," so that it redundantly suggested that the MCC prioritized countries where it had "the best opportunity to reduce poverty, generate economic growth and poverty reduction" (MCC 2007, 3–4). In FY 2009, the superfluous "poverty reduction" introduced in FY2008 was removed, but the passage remained otherwise unaltered (MCC, 2008, 4). In FY 2010, the MCC introduced only the cosmetic substitution of "where MCC would likely have the best opportunity" for "in which countries MCC would likely have the best opportunity" (MCC 2009b, 4).

33 In FY 2013, the Board explained that: "As with previous years, a number of countries that performed well on the quantitative elements of the selection criteria (i.e., on the policy indicators) were not chosen as eligible countries for FY13. FY13 was a particularly competitive year: five countries were within the window of consideration for subsequent compacts, multiple other countries passed the scorecard (some for the first time), and funding was limited due to budget constraints. As a result, not every country that passed the scorecard was selected for MCC eligibility" (MCC 2012b, 4). The language for FY 2014 was essentially the same, with appropriate substitutions for the number of countries working to develop compacts (MCC 2013e, 5).

34 As Johnson and Zajonc (2006, 4) explain, "Bush cited two reasons for [the MCC] approach. First, because MCC funds would only go to the best governed poor countries, the funds would be better spent. Second, by basing aid on past performance, the MCC would create an incentive for good governance."

35 By 1997, the structure of this system of meetings had changed, with the European Commission (1997, 53) explaining that "[i]In light of the intensity of contacts between the Union and the applicants during the coming phase of the accession process, in the framework of the negotiations, the Europe Agreements and the Accession Partnerships, the present structured dialogue no longer appears appropriate. Most accession-related issues of principal concern to the Union and the applicants will be discussed bilaterally."

36 The European Commission (2009, 5) has thus explained, in the Albanian case, that "[t]he EU provides guidance to the Albanian authorities on reform priorities through the

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European Partnership. Progress on these reform priorities is encouraged and monitored via the political and economic dialogue with Albania. This dialogue takes place through the SAA structures. The first SA Council was held in May 2009. Six sectoral working groups/sub-committees have been held since November 2008."

37 As Goldsmith (2011, 160) notes, "[t]he performance-based approach to foreign aid is endorsed by conservative think-tanks such as the American Enterprise Institute and the Heritage Foundation and also enjoys backing in the development community. Advocacy groups like Oxfam, Partners for Democratic Change, Initiative for Global Development and the Centre for Global Development approve the MCA. George Soros is very supportive, despite his otherwise disparaging assessment of Bush's foreign policy. Researchers at the mainstream Brookings Institution consider that the initiative has the potential of offering the 'biggest bang for the buck' of all US development assistance programmes and that it may turn out to be the world's leading 'venture capitalist' for promoting economic improvement in poor countries. Even international activist celebrities like Bono and Bob Geldof back the governance-oriented strategy."

38 Collins (2009, 374) observes that "[f]unding for the program has fallen far short of the initial $5 billion goal, as the MCA received funding of $1 billion in 2004, $1.5 billion in '05; $1.75 billion in '06 (at which point it should have reached $5 billion), and $1.75 billion in '07. For FY 2008, appropriations for MCA were cut to $1.54 billion."

39 Goldsmith (2011, 160) contends that "[d]espite the potential for misgivings about the previous administration's initiatives in development policy, President Obama signalled his positive view by requesting $1.4 bn to fund the MCA in 2010 – a two-thirds increase over the amount enacted in 2009."

40 As Owusu (2007, 4, 6, 11) explains, the MCC "was based on the claim that global poverty and international terrorism are linked, and therefore alleviating poverty would help combat terrorism." However, even setting aside the fact that "[t]he poverty-terrorism relationship is complex and hotly debated," the MCC's "merit-based criteria contradict the poverty-terrorism basis of the policy; that is, if we accept that terrorism thrives in nations where failed states provide safe havens for such activities, then failed states should be major recipients of MCA funding."

41 Thus, the MCC's CEO, Daniel W. Yohannes, has testified before the Senate Foreign Relations Committee that "MCC investments look to remove constraints to growth so that the private sector will invest and flourish. These investments are helping to build a foundation for U.S. exports and increased business activity, which will mean increased growth and job opportunities here at home" (MCC 2011e, 5).

42 Schimmelfennig (2001, 54) likewise attributes the weakness of the CEEC position to the fact that "[c]apital and foreign aid flow almost entirely from West to East."

43 Pridham (2006, 397–398) has argued that "[c]onditionality policy is essentially top-down in its conception but also limited in its effects, as shown by its greater impact on the institutional compared with the intermediary and societal levels; and, similarly, conditionality has been more successful in formal terms (i.e. institutional and legislative) than in concrete terms (i.e. with respect to implementation)." Noutcheva and Bechev (2008, 133) concur, stating that "the fast pace of harmonization with the *acquis* produced numerous pieces of legislation which 'courts, lawyers, regulatory bodies and others charged with implementation had difficulty understanding, applying and enforcing."

44 Pridham (2008, 373) observes that "the scope of the EU's conditionality expanded from the mid-1990s significantly beyond the (somewhat bland) formal democracy criteria utilized

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in previous decades into areas of substantive democracy," elaborating that "[w]hile the Copenhagen criteria as defined in 1993 covered the stability of democratic institutions, the rule of law and human and minority rights, since then EU conditionality has also come to specify the strengthening of state capacity, the independence of judiciaries, the pursuit of anti-corruption measures and the elaboration of a series of particular human and minority rights (as well as highlighting the severe condition of the Roma); but also economic, social and cultural rights such as those relating to trafficking in women and children and gender equality. More recently, other issues have been added, notably the handing over to the Hague tribunal of war criminals from the Balkan conflicts of the earlier 1990s" (2006, 380).

45 Not all agree that the Armenian compact development process was participatory, the Social Policy and Development Center (2007, 4) has charged that "[t]hese NGOs [in the Working Group to develop Armenia's MCC proposal] were elected with no transparent criteria and procedures… [W]hen initially created by public proposal, the final paper was transformed to expert work 'independent' from the society."

46 Thus, Wiebe (2008, 5) has stated that "[a]s the first step towards submitting a proposal, MCC asks country partners to establish local teams to undertake a Constraints Analysis (CA) to identify the main bottlenecks to growth in the local economy… [T]he early CA experiences required considerable collaboration as both sides learned how to use the tool effectively."

47 Strangely enough, on the same page that it explains that it will develop threshold programs in-house, the MCC (2010b, 3) suggests that "[a] broader consultative process will also serve as an additional measure of feasibility and help ensure that the reforms sought by the Threshold Program will have the necessary degree of country ownership and political support to be truly sustainable."

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